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A Practical Look at the New Juvenile Act

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I. INTRODUCTION

The emergence of a comprehensive new Act is much like the birth of a baby; you are never sure exactly what you have until it is out. Act Number 333 of 1972, the new "Juvenile Act,"[1] was approved by the Legislature on December 6, 1972, and became effective on February 6, 1973. At this writing, there has been a ten-month "shakedown

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1. PA. STAT. ANN. tit. 11, §§ 50-101 to -103, -201, -301 to -337 (Supp. 1973).

cruise" for the new legislation. Lawyers, judges, administrators and probation officers have been working out the first problems of the legislation. The major review lies ahead, as many of the emerging controversies surrounding this legislation are just now making their way into the appellate courts.

This writing is designed to outline some of the practical problems that those of us working with the Act have discovered in the past ten months. There obviously is a "Philadelphia" bias, as this writer has been working in the Philadelphia courts, and has been assisted in this article by comments from administrators, judges, district attorneys, public defenders and private counsel working in the same forum.[2]

Unfortunately, the problems facing Philadelphia today have tended to become the problems of other urban and suburban counties tomorrow, as the wave of juvenile crime spreads and as the problems created by increased volume confront all court systems. It is clear that working within the scope of the new Juvenile Act will present challenges to lawyers and non-lawyers confronted with it.

II. The Act

A. *Its Purposes*

It would be understandable to assume that a major piece of legislation affecting the well-being of juveniles would be devoid of political influences. It is true that partisan interests did not enter into the formulation of the new Juvenile Act. However, nothing goes through a legislature without some brand of political confrontation.

There are different schools of thought concerning the proper perspective for handling the problems of juvenile delinquency. A detailed analysis of this aspect of the situation would not only consume the space allotted for this article but would cover this entire issue and then barely scratch the surface.

In brief, there are those who advocate what might be called the

2. The writer would like to especially thank the following for their assistance: Hon. Frank J. Montemuro, Jr., Administrative Judge of the Family Court Division of the Philadelphia Court of Common Pleas; Dr. Leonard Rosengarten, Chief Deputy Court Administrator for the Family Court Division; Stanley M. Hopson, Deputy Administrator for the Juvenile Branch of the Family Court Division; Lewis P. Mitrano, Chief of the Family Court Division of the Philadelphia District Attorney's Office; Jonathan Miller, Chief, Family Court Division of the Defender Association of Philadelphia and Michael L. Levy, former Chief of the Family Court Division of the Defender Association of Philadelphia.

"social worker" approach to handling the problems of juvenile delinquency. This philosophy stresses the individual child, aiming for deinstitutionalized and community based treatment, hopefully in the home. Others take more of a "law enforcement" approach, pointing out that the "children" coming before the court are involved in shootings, stabbings, rapes, armed robberies and other violent crimes at relatively young ages, and asking for a juvenile justice system that can handle these youths without merely transferring them to the adult system.

Much of the substantive portion of the Juvenile Act has evolved as a compromise between the two philosophies. The statement of purposes has not so evolved—it is a statement of the "social worker" view of treatment of juveniles.[3] This is because the original draft of the Juvenile Act was stamped with the influence of the State Department of Welfare, which is on the "social worker" side of the philosophical street, and prosecutors, many judges and others on the "law enforcement" side concentrated more on substantive provisions than the statement of principles in working for amendments to the draft.

Sections 1(b)(1) and 1(b)(3)[4] set forth the conflict. The Juvenile Act talks in terms of preserving "the unity of the family" and working "in a family environment" *whenever possible.*[5] The problems come up when determining when this *is* "possible." Especially in the urban juvenile gang culture, it is precisely the lack of a strong home environment that results in the delinquent behavior in the first place. An overwhelming number of the juveniles involved in serious crimes are from large families with no father in the home and live in socio-economically deprived areas where the principal source of income is grants from the Department of Public Assistance.[6] For many of these children, it is clear that the family has little influence on his or her behavior and development. The chief social structure for the child

3. PA. STAT. ANN. tit. 11, § 50-101 (Supp. 1973).

4. *Id.* § 1(b). This act shall be interpreted and construed as to effectuate the following purposes:

(1) To preserve the unity of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of children coming within the provisions of this act . . . .

(3) To achieve the foregoing purposes in a family environment whenever possible, separating the child from parents only when necessary for his welfare or in the interests of public safety.

5. *Id.*

6. Of 10,824 children involved in delinquency cases in Philadelphia County in 1972, only 4,949, or 45.7 per cent, were living at home with both natural parents; 3,842, or 35.5 per cent, were living with their mother only. See the 1972 Report, Family Court Division, Court of Common Pleas of Philadelphia.

is that created by his peers. In the inner city, often this is the highly-structured, para-military format of the teen-age gang. The "law enforcement" advocate would contend that to comply with the purpose of the Juvenile Act "to provide for the care, protection and wholesome mental and physical development of children coming within the provisions of this Act"[7] will make it impossible to also follow the dictates of retaining the family environment. He would claim that an institution far away from the troubled home environment is the only hope to restructure the social outlook of the delinquent.

Another seemingly innocuous clause in the statement of purposes stirs feelings among those working with the Juvenile Act. Section 1(b)(4) provides that the "constitutional and other legal rights" of juveniles must be recognized and enforced.[8]

The only catch here is that the full enforcement of the rights of a juvenile may get him killed. Especially for a gang-related juvenile or a youth immersed in the drug culture, if he "beats the rap" and returns to his community, he faces gang retaliation or more of the same drug use. Defense counsel must consider whether to raise a motion to suppress a search that turned up a loaded "38" or 25 bags of heroin to return his client to the street, when the mother is crying for help because she has lost control of her son. The lawyers of the Defender Association of Philadelphia believe that their responsibilities as lawyers under the Code of Professional Responsibility require them to do all that is possible to keep their clients out of institutions.[9] In view of the fact that this might not always be the best long-term result for their clients, this issue does cause tension for the defenders. Other counsel representing juveniles have the same problem, but to this writer appear more willing to deviate from their strict legal responsibility.[10]

This writer has vivid memories of one case in which three boys were charged with severely beating a fellow-gang member. The beaten boy wanted to get out of the gang and reneged on the de-initiation ritual of having a "fair one" (fair fight) with everybody in the gang. One offender was sent to an institution. A second was discharged due

7. PA. STAT. ANN. tit. 11, § 50-101 (Supp. 1973).
8. *Id.*
9. Interview with Michael L. Levy, former Chief of the Family Court Division of the Defender Association of Philadelphia, in Philadelphia, July 16, 1973; correspondance from Jonathan Miller, Chief, Family Court Division, Defender Association of Philadelphia, Nov. 20, 1973.
10. These attorneys who spoke with the writer had best remain nameless.

to a case of memory failure on the part of the Commonwealth's witnesses. The third boy was placed on probation. The boy in the institution became an honor student there, learned how to play bass, and is getting set for a job on his release. The boy who was discharged is presently awaiting trial for attempted murder in a gang shooting. The boy who was placed on probation was shot five days later, lost one eye and will be in a wheelchair for the rest of his life.

B. *Pretrial Detention*

Traditionally, bail has not been set for juveniles in Pennsylvania. A child usually has little in the way of independent resources, and the decision has been whether or not to release him or her to his parents or guardian. Issues dealt with in the new Juvenile Act concern when a juvenile may be held, how long he or she may be held, and where he or she may be held.

1. *Preventive Detention*

Prior to the Juvenile Act, the leading case on the issue of when a juvenile could be held in custody was *Commonwealth ex rel. Sprowal v. Hendrick*.[11] The court in *Sprowal* pointed out that juveniles normally have only limited mobility and can be expected to be returned for trial by their parents or guardians.[12]

The court also said:

> Unlike an adult, however, a juvenile may be detained by the juvenile court for reasons other than the necessity of guaranteeing his presence at future proceedings. If a juvenile does not have a home with his parents or other responsible party, or is in need of protective custody, or is in need of psychiatric help or should have psychological testing and evaluation, he or she may be detained for such protective purposes.[13]

A usual case for the retention of a juvenile is the situation whereby the parents or guardian refuse to take the child home, either because

11. 438 Pa. 435, 265 A.2d 348 (1970).
12. *Id.* at 438, 265 A.2d at 349.
13. *Id.* at 438-39, 265 A.2d at 349. The *Sprowal* court added that the detention must be tailored to the justification so that detention for the purpose of administering test would be impermissible if the tests could be administered on an out-patient basis.

they cannot control the child or believe that the child would be in real danger on the streets.

The law was not, however, settled with respect to other circumstances. One question that frequently arose was the quantum of proof necessary before a child could be held in custody, particularly in circumstances where a juvenile was charged with a very serious crime but had no record of failures to appear at court hearings. On some occasions juveniles were held for the same reason that high bail would be set for adults, *i.e.*, that because of the serious nature of the charge and the likelihood of incarceration if convicted, there was a serious risk of flight. In other instances, although there was no specific indication that rival gang members were "out to get" the defendant and although the parents were willing to take the risk of having their son home, juveniles were held because the record indicated that the offense was part of an on-going gang war in the inner city and from that it was presumed that he would be in danger back on the street.

Prior to the new Juvenile Act, the greatest controversy regarding detention was over the meaning of the term "protective custody," which was used in the *Sprowal* decision.[14] Who was to be protected? Was it the offender himself who might be the victim of retaliation? Or, if the youth charged had a record for a series of offenses, could the community be protected from him under the "protective custody" language in the decision?

This was resolved by section 12 of the new Juvenile Act,[15] which allows preventive detention when it is decided there is a risk to the community from the juvenile. This section provides as follows:

> Detention of Child. A child taken into custody shall not be detained or placed in shelter care prior to the hearing on the petition unless his detention or care is required to protect the person or property of others or of the child or because the child may abscond or be removed from the jurisdiction of the court or because he has no parent, guardian, or custodian or other person able to provide supervision and care for him and return him to the court when required, or an order for his detention or shelter care has been made by the court pursuant to this act.[16]

It is now clear that the legislature has provided that a juvenile can

14. *Id.* at 439, 265 A.2d at 349.
15. PA. STAT. ANN. tit. 11, § 50-309 (Supp. 1973).
16. *Id.*

be detained "to protect the person or property of others."[17] It also seems clear that this provision will be tested in the appellate courts. There have been several problems in framing the issue for appeal. On the one hand, often a juvenile being held because he is a risk to others is also being detained because his parents cannot or will not take him home—because he himself faces grave risks if returned to the community, or because there is a good chance that he will not return for trial. Also, since the trials are now coming up so quickly,[18] the point often rapidly becomes moot, since the juvenile is either adjudicated delinquent or discharged within ten days of the decision to hold him in custody. At some point in time, the issue will be presented as to whether it is constitutional to hold a seventeen-year-old who has been involved in a gang slaying or stolen a number of cars when an eighteen-year-old co-defendant must be released on bail. It is noted, however, that for adults probation or parole violations often result in detainers being lodged. This is not the practice in juvenile court. Therefore, issues arise over repeat offenders who are juveniles which might not arise if adults were involved.

2. *How Long a Juvenile May Be Held*

Although section 12 expanded the grounds upon which a juvenile may be held and in so doing appealed to the "law enforcement" advocates, what section 12 gave, section 18(a) took away. Section 18(a) provides:

> Section 18. Summons. (a) After the petition has been filed the court shall fix a time for hearing thereon, which, if the child is in detention, shall not be later than ten days after the filing of the petition. If the hearing is not held within such time, the child shall be immediately released from detention . . . .[19]

This section can be read to provide for mandatory release whenever the hearing cannot be held within ten days. It is argued that the juvenile then must be released even if there is no one to take him home, or if it appears he will flee and not return for trial, or if his life is in danger, and/or if he is likely to victimize someone else. Some argue that this section applies even if the necessity to continue the case arises without fault on the part of the Commonwealth.

17. *Id.*
18. *See* text section B(2) *infra.*
19. PA. STAT. ANN. tit. 11, § 50-315 (Supp. 1973).

This writer already has personal knowledge of a situation which questions the wisdom of this interpretation of the section more than the most drastic hypothetical situation propounded by the "law enforcement" advocates. A boy stabbed another as part of a gang-war grudge and was sent to a juvenile institution for the offense. When he was released from the institution, he went after the same boy again, this time shooting him and wounding him critically. The shooter was held at his detention hearing because of his dangerous proclivities. At the hearing ten days later, the victim was still in the intensive care unit of a hospital in serious condition and unable to appear. When the district attorney asked for a continuance, defense counsel moved for the defendant's release under section 18(a). This writer continued the hearing for an additional ten days on the grounds that it is permissible to continue detention for that period when circumstances beyond the control of the Commonwealth necessitated the continuance and there is a strong need for continued detention within the framework of section 12.

Because of practical considerations, this issue has been slow to reach the appellate courts. Both the district attorney's office and the public defenders (who handle the bulk of Philadelphia's juvenile cases) are aware of the adage that "hard cases make bad law." Both want a case that has a desirable factual situation for their legal appeal. Thus, in the case of the boy who assaulted another twice, the public defender is reluctant to have this case as the test case. In other circumstances, where the danger to the community is not so clear-cut, and an unexplained failure to appear on the part of a Commonwealth witness necessitates the continuance, the district attorney will consent to the release from custody at the time of the ten-day hearing. Also, if the juvenile is detained for only ten more days, often the case will be finally determined before an appeal of the pre-trial detention can be fully perfected.

It is surprising to note that, in general, the office of the district attorney is pleased with the ten-day rule, and that the rule causes problems for defense counsel.[20] The Commonwealth has generally completed most of its investigation by the time the arrest is made and is ready for trial. The victim and key witnesses are known and have been interviewed by the police. Evidence has been seized. Moreover, it is

20. Interviews with Lewis P. Mitrano, Chief of the Family Court Division of the Philadelphia District Attorney's office, and Michael L. Levy, former Chief of the Family Court Division of the Defender Association of Philadelphia, in Philadelphia, July 25, 1973.

easier to get witnesses to court ten days after the event. There is less likelihood that they would have moved, and the crime is still fresh in their minds. They are still angered by the event and more willing to appear to testify. For these reasons they make better witnesses.[21]

The defense, on the other hand, has just begun to find out what the case is about. They have an interview with their client, which may or may not be candid and detailed. Defense counsel needs time to ascertain, locate and subpoena witnesses. Defense lawyers are often faced with a dilemma: they are not quite ready to proceed, but a request for a continuance will result in their client's remaining in custody for a number of days longer. The defense bar generally would prefer to have the ten-day rule changed to a fifteen-day or twenty-day rule.[22]

The ten-day rule creates some difficulties for the court administration and other supportive staff. Schedules for court can no longer be made up far in advance. Subpoenas for witnesses must be prepared in a hurry, and there is pressure on the sheriffs or district attorney detectives who serve the subpoenas. However, these administrative problems are being managed.[23]

It is suggested that remedial legislation would be desirable to: (1) spell out those circumstances when a juvenile may be detained longer than ten days; and (2) extend the ten day hearing to fifteen or twenty days.

3. *Where a Juvenile May Be Detained*

Section 14(4) of the new Juvenile Act provides that no juvenile may be detained in any facility with adults unless there is no appropriate facility available.[24] If no appropriate facility is available, the juveniles may be kept in the same facility with adults, but shall be kept separate and apart from the adults and shall under no circumstances be detained there for more than five days.[25]

This certainly is a desirable end. Unfortunately, the separate facilities just do not exist at the moment. Approximately 100 juveniles in Philadelphia are housed in two cell blocks at the House of Correction.

21. *Id.*
22. Interview with Michael L. Levy, former Chief of the Family Court Division of the Defender Association of Philadelphia, in Philadelphia, July 16, 1973.
23. Interview with Stanley M. Hopson, Deputy Administrator for the Juvenile Branch of the Family Court Division of the Philadelphia Court of Common Pleas, in Philadelphia, July 2, 1973.
24. PA. STAT. ANN. tit. 11, § 50-311(a)(4) (Supp. 1973).
25. *Id.*

The facility is circular, with the cell blocks serving as the spokes of a wheel. There is a certain amount of mixing when the juveniles pass through the central core to move for meals, classes, recreation, etc. In many other counties, there is not a sufficient volume of juvenile cases to justify construction of a separate facility.

In Philadelphia, juveniles are still being housed in the House of Correction despite section 14(4) of the new Juvenile Act. There may be some reluctance on the part of defense counsel to press too rapidly on this issue, because if they are successful, the result in Philadelphia may be a massive overcrowding at the Youth Study Center, where the younger juveniles (under sixteen) are housed. Also, Senate Bill No. 125 would postpone the effective date of this provision of the Juvenile Act until December 31, 1974.[26] County governments, particularly in fiscally hard-pressed areas such as Philadelphia and Allegheny counties, would have been less reluctant to accept the state mandate to construct new juvenile detention facilities if the state had also appropriated the funds to pay for this construction.

There may be some argument that juveniles are not really detained in a facility "with" adults[27] when they are in a separate cell block. In Philadelphia, the wings of the House of Correction used for juveniles are called by a different name, Pennypack House, although from time to time different wings are so designated as juveniles are shifted from one cell block to another. Since there is some mixing in these jointly-used facilities, and the Juvenile Act does make provision for five-day placement in a jointly-used facility if juveniles are kept separate from the adults,[28] it appears that juveniles are "with" adults if they are in the same building.

This writer is not aware of any reason why the time fixed for holding a hearing if a juvenile is detained is ten days, but the time the juvenile may be held in the facility is only five days. It would appear that at least the two time limits should be the same. Moreover, if the facilities do not exist when the juvenile is first committed, they are not going to be constructed five days later. Again there is a conflict that develops internally in the new Juvenile Act between section 12, which describes the circumstances when it would be harmful to a juvenile or the community if he were released, and other sections which appear to provide for mandatory release into these harmful situations.

26. Pa. S. 125, 1st Sess. § 14(A)(4) (1973).
27. PA. STAT. ANN. tit. 11, § 50-311 (Supp. 1973).
28. *Id.*

Almost everybody agrees that juveniles should not be detained with adults prior to trial. This writer is aware of arguments, dating back more than six years, against the mixed detention of juveniles and adults, and the advocacy of separate juvenile detention probably started many years before that. It is one thing to support a principle, however, and another to come up with the money to turn the principle into reality. Hopefully, the goal can somehow be met in the not too distant future. The new Juvenile Act may provide the incentive.

C. *Jurisdiction of the Court*

The new Juvenile Act continues the carefully established distinctions between what is and what is not to be the subject of juvenile court proceedings.[29] And, as was the case under prior law, counsel and the courts often bend this framework when the interests of justice and the welfare of the juvenile before the bar of the court so require.

The "separateness" of juvenile court proceedings has become less significant as judges are shifted in and out of that assignment. In the smaller counties, there are not enough juvenile cases to occupy one judge full-time, so the juvenile judge will hear other matters. In Philadelphia, only six of twenty Family Court Division judges will be assigned to juvenile work at one time, and judges of that division will be rotated between juvenile court, Domestic Relations and Trial Division work.

Sometimes this leads to somewhat strange results. This writer presided over a case involving one boy where both the adult and the juvenile systems became involved. The boy was having troubles on probation, and was to go into the Marines as a condition of further probation. This writer released the boy to the custody of a minister for the five day period before his enlistment. Over that time, he was arrested for breaking into the coin box of an apartment house washing machine. He lost his chance to go into the Marines, and was in custody for some time until the district attorney and defense counsel agreed to a placement at a Youth Development Center. However, he could not go because the coin box case had been transferred to adult court. Although the district attorney had no objection to the juvenile disposition, there were great practical difficulties in locating the paperwork to effectuate this, since two different jurisdictions were involved

29. *Id.* § 50-103.

—Family Division and Trial Division. Meanwhile, this writer was transferred to Trial Division on the general felony list for two months. Bucking all percentages, the boy's coin box case came up on that list. Although this facilitated the ultimate disposition, it was not without a good deal of surprise on the part of the boy who thought he left one judge behind in juvenile court only to find he drew him again in his adult case.

The jurisdictional problems have taken on some new ramifications, not only because of the new Juvenile Act, but also because of other recent developments in the law.

1. *Summary Offenses*

The jurisdictional aspects of the new Juvenile Act are partially set forth in section 2 under "Definitions."[30] In this section, it is specifically provided that summary offenses do not constitute "delinquent acts."[31] The Juvenile Act then goes on to provide that (unless a child is deprived) there is no jurisdiction under the Juvenile Act unless he is alleged to be delinquent.[32] He must first commit a delinquent act before he can be considered to be a "delinquent child."[33] Thus it seems fairly clear that if a juvenile commits only a summary offense, he cannot be prosecuted in the juvenile court system.

However, section 7 of the Juvenile Act,[34] dealing with the transfer of cases from adult court to juvenile court, provides that in a "criminal proceeding" other than murder, if it is discovered that the defendant is a child (under eighteen),[35] the judge shall "forthwith halt further criminal proceedings, and, where appropriate, transfer the case to the [juvenile court]."[36]

It is therefore being argued by defense counsel that there is *no* jurisdiction anywhere for juveniles charged with summary offenses. The summary offenses are not delinquent acts under the Juvenile Act,[37] and the juveniles cannot be tried in adult court if summary offenses are to be treated as "criminal proceedings." This conflict has become relatively more significant in counties not plagued with serious

30. *Id.* § 50-102.
31. *Id.* § 50-102(2)(ii).
32. *Id.* § 50-103.
33. *Id.* § 50-102(3).
34. *Id.* § 50-303.
35. *Id.* § 50-102(1).
36. *Id.* § 50-303.
37. *Id.* § 50-102(2).

juvenile crime, since the problems of housing juveniles with adults, bringing cases to trial within ten days, and other difficulties concerned with serious crimes are not as pronounced in those jurisdictions.[38]

This possible lack of jurisdiction becomes especially incongruous when it is noted that one of the summary offenses is underage drinking,[39] which eventually will probably apply only to those under 18 and thus in the juvenile court jurisdiction. It would seem strange for the legislature to create a crime for which there would be no forum.

The alternative is to try juveniles charged with summary offenses in the same manner as adults would be tried for summary offenses. A number of summary offenses are crimes with which juveniles are commonly charged. These offenses include disorderly conduct,[40] harassment,[41] criminal mischief where the damage is under $500,[42] and a first retail theft where the dollar value involved is less than $100.[43] These offenses can carry sentences of up to ninety days in jail. Since the conviction for the summary offense would not be under the Juvenile Act, it appears that the juvenile could be committed to an adult institution for three months for the summary offense. As is discussed in section F7 of this article, section 27 of the new Juvenile Act prohibits the commitment of juveniles adjudged delinquent to facilities used primarily for the execution of sentences of adults convicted of a crime.[44] Thus, a juvenile found delinquent for rape or attempted murder could not be sent to the standard county prison while a juvenile convicted for underage drinking could be.

As a practical matter, many defense counsel are waiving this jurisdictional problem and allowing the summary offense to be tried in juvenile court. Obviously, there is a question as to whether the waiver of jurisdiction is valid. Nonetheless, a consent decree (pre-trial probation —see discussion in section II. D3 of this article) or regular juvenile probation often seems better to defense counsel than having their clients released from juvenile court and rearrested and booked with the drunks and other adults charged with summary offenses at the police district. Also, Senate Bill No. 125 would eliminate this problem,

38. Interviews with Lewis P. Mitrano, Chief of the Family Court Division of the Philadelphia District Attorney's office, and Michael L. Levy, former Chief of the Family Court Division of the Defender Association of Philadelphia, in Philadelphia, July 25, 1973.
39. PA. STAT. ANN. tit. 18, § 6308 (1973).
40. *Id.* § 5503.
41. *Id.* § 2709.
42. *Id.* § 3304.
43. *Id.* § 3929.
44. PA. STAT. ANN. tit. 11, § 50-324 (Supp. 1973).

as it would define delinquent act to exclude only summary offenses under the Vehicle Code,[45] not all summary offenses.[46]

2. *Murder*

Section 2(2) of the Juvenile Act preserves the prior law by specifically excluding murder from the definition of "delinquent act."[47] Today, however, as in the past, murder cases are still being tried in juvenile court. They are tried in juvenile court merely by calling the offense "unlawful killing" instead of "murder." Unlawful killings are not murder if they are voluntary manslaughter or involuntary manslaughter. Under the practice in juvenile court, however, even some offenses which technically rise to the level of murder are considered unlawful killing. The decision in this matter is often made by the district attorney, who can proceed on a murder bill of indictment or merely ask for prosecution of the "unlawful killing." The kinds of cases which proceed in this fashion involve defendants who may have been only tangentially involved in a gang killing, or young juveniles with little prior contact with juvenile court involved in an unpremeditated killing, and other situations where it appears that a final disposition to a delinquent institution is more in order than adult imprisonment.

By tradition, murder cases in Philadelphia have been preliminarily tried by a Family Division judge who sits as a committing magistrate for the preliminary hearing. If there is no prima facie case of murder but there is a prima facie case of manslaughter, the matter is then in juvenile court for disposition of the "unlawful killing." If there is a prima facie case of murder, the matter then proceeds to the grand jury.

There has been a change in Philadelphia procedure with respect to the processing of juveniles, but this change was not occasioned by the new Juvenile Act. Until the summer of 1973, juveniles charged with murder would be processed as other juveniles through the Juvenile Aid Division officers of the police department and the Youth Study Center. They would only be turned over to the adult court after the preliminary hearing. Today, the processing of all murder suspects takes place in the Police Administration Building in the same manner. The reason for this is the necessity for an immediate preliminary arraign-

45. PA. STAT. ANN. tit. 75, §§ 101-2521 (1970); *id.* § 3001-13 (Supp. 1973).
46. Pa. S. 125, 1st Sess. § 2(2) (1973).
47. PA. STAT. ANN. tit. 11, § 50-102(2) (Supp. 1973).

ment. The Pennsylvania Supreme Court in *Commonwealth v. Futch*[48] and *Commonwealth v. Tingle*,[49] held that if an immediate preliminary arraignment is not held, any statement made by a defendant after the time he should have had his preliminary arraignment must be suppressed. Because of the time spent in waiting for Juvenile Aid Division officers to interview juveniles and in the time spent in transportation to and processing at Philadelphia's Youth Study Center, the mechanics of processing prevents the police from having enough time to conduct an interview of the juvenile. It has therefore been necessary to process all juveniles charged with murder as adults to allow time for questioning.[50]

3. *Need for Treatment, Rehabilitation and Supervision*

A distinction is made in the definitional section of the Juvenile Act between a "delinquent act"[51] and a "delinquent child."[52] A "delinquent child" not only must have committed a delinquent act, but also must be "in need of treatment, supervision or rehabilitation."[53]

Section 23(b) of the Juvenile Act[54] provides that after a finding of guilt on the facts, the court then or at a continued hearing, should hear evidence to determine whether the child is "in need of treatment, supervision or rehabilitation and to make and file its findings thereon." If the act charged constitutes a felony, this in itself is sufficient to indicate the need for treatment, supervision or rehabilitation.[55] However, if the act is a misdemeanor, the additional finding is necessary even to justify probation; and if there is no finding of such a need, the child must be discharged from any detention or restriction.[56]

This change has produced only a small effect. It has been raised by defense counsel from time to time but considering the broad language involved and the total absence of guidelines, it is possible to find almost any youngster in need of "treatment, supervision or rehabilitation."[57] Often a child's school record will be considered. In Philadel-

48. 447 Pa. 389, 290 A.2d 417 (1972).
49. 451 Pa. 241, 301 A.2d 701 (1973).
50. Interview with Lewis P. Mitrano, Chief of the Family Court Division of the Philadelphia District Attorney's Office, in Philadelphia, May 27, 1973.
51. PA. STAT. ANN. tit. 11, § 50-102(2) (Supp. 1973).
52. *Id.* § 50-102(3).
53. *Id.*
54. *Id.* § 50-320(b).
55. *Id.*
56. *Id.*
57. *Id.*

phia, the Board of Education places representatives in each juvenile courtroom to provide up-to-date records on attendance and behavior. Many of the juveniles coming before the Philadelphia courts are from large families where there is no father in the home.[58] This can be used as an indication that there is a need for supervision. It is still hard to get away from the concept that if a child goes out and steals a car, there is something bothering him and that this alone would at least justify placing him on probation.

There is no question that there is a likelihood of appellate litigation to clarify and amplify this section.

4. *Transfer to Adult Court*

Because the new Juvenile Act tends to adopt the "social worker" theory of juvenile justice somewhat more than past practices, and because of uncertainty and difficulties for the Commonwealth in some other areas (ten day rule, detaining juveniles with adults, etc.), the district attorney has been more frequently requesting that the juvenile be tried as an adult. This is effected through what used to be called a "certification" hearing and is now a "transfer" hearing. The procedure is set forth in section 28 of the Juvenile Act.[59]

There has been considerable litigation involving the procedures that must be followed before a juvenile can be tried as an adult. One of the half dozen most important United States Supreme Court cases involving the juvenile process, *Kent v. United States*,[60] dealt with this issue. Mr. Justice Fortas, speaking for the majority, said that before a juvenile could be tried as an adult, he is "entitled to a hearing, including access by his counsel to the social records and probation or similar reports which presumably were considered by the court, and to a statement of reasons for the Juvenile Court's decision. We believe that this result is required by the statute read in the context of constitutional principles relating to due process and the assistance of counsel."[61]

The practice prior to the new Juvenile Act was well outlined by Allegheny County Judge Maurice B. Cohill, Jr., who described the procedure in certification hearings as follows:

58. *See* note 6 *supra*.
59. PA. STAT. ANN. tit. 11, § 50-325 (Supp. 1973).
60. 383 U.S. 541 (1966).
61. *Id.* at 557.

> This has been construed by most as requiring the judge to sit first as a committing magistrate; the Commonwealth must present a *prima facie* case. Following this presentation, there is usually a motion from the representative of the district attorney (if one is present) for certification. The court then considers: the past delinquent history of the juvenile; his maturity; the previous disposition by the court of cases involving the juvenile; whether he is amenable to rehabilitation under facilities available to the juvenile court; whether he allegedly was involved with adult co-defendants; and whether the interests of justice would better be served by a jury trial—jury trials presently being prohibited by the Pennsylvania Juvenile Court Act.[62]

On the whole, section 28 of the new Juvenile Act codifies prior procedure. It provides for a hearing with notice in writing three days prior to the hearing that transfer will be requested.[63] The Juvenile Act sets fourteen as the minimum age before there can be transfer to adult courts.[64] Of course, a prima facie case must be first made out.[65] There are three requirements which must be met before a juvenile may be transferred to adult court: (1) he must not be amenable to treatment, supervision or rehabilitation as a juvenile through available facilities; (2) he should not require commitment to an institution for the mentally retarded or mentally ill; and (3) either the crime must carry a sentence of more than three years, or the interests of the community require that he be placed under legal restraint or discipline.[66]

The Juvenile Act spells out that in making the determination, "the court may consider age, mental capacity, maturity, previous record and probation or institutional reports."[67] It does not provide for the procedural aspects considered in the past, *e.g.*, whether a jury trial is desirable or whether there are adult co-defendants so that a joint trial could be effected. If the crime carries a maximum penalty of less than three years, the test of whether the interests of the community require legal restraint or discipline is so broad as to almost be a non-test. Another problem arises because the fate of Camp Hill as a juvenile institution is in doubt.[68] The Juvenile Act speaks in terms of the child

62. Cohill, *The United States Supreme Court and Juvenile Courts—An Overview*, 9 DUQ. L. REV. 573, 574 (1970).
63. PA. STAT. ANN. tit. 11, §§ 50-325(a)(2), (3) (Supp. 1973).
64. *Id.* § 50-325(a)(1).
65. *Id.* § 50-325(a)(4).
66. *Id.* §§ 50-325(a)(4)(i)-(iii).
67. *Id.* § 50-325(a)(4)(i).
68. *See* text section II(F)(5) *infra.*

being amenable to treatment in "*available* facilities."[69] With the exception of Camp Hill, all of the Pennsylvania facilities are in open or non-secure settings. If a child has a tendency to run away from institutions such as the Youth Development Centers, is this enough to have him transferred to adult court?

The Juvenile Act does not require a written or specific statement of the reasons for the transfer if that is the decision of the court, although that is required under *Kent v. United States*.[70] A practical problem can arise in this regard. Sometimes the reasons for the transfer are made obvious in the argument on transfer from the comments of the district attorney and defense counsel and the response of the judge. This is not often transcribed by the court reporter, however, and there is a danger that the statement of reasons for transfer may not find their way into the record.

The new law seems as flexible as the old. What remains to be seen is how much more often the district attorney will request transfer, and how much more often it will be granted. The question seems to be less one of the parameters of the law than the practice as it will develop.

5. *Transfer from Adult Court to Juvenile Court*

There are a surprising number of circumstances where a juvenile is charged as an adult and starts proceeding through the stages of adult prosecution. There are several possible reasons for this. The juveniles often say that when the police pick them up they do not believe them when they state their age as under eighteen and for that reason they are booked as adults. On other occasions, a juvenile may have an extensive record, and may be on probation or be a runaway from an institution. This juvenile will give a false name and give his age as over eighteen in the hopes that when his adult case comes up, he will be treated as a "first offender" and wind up on probation, rather than being sent to a juvenile institution.

Section 7 of the new Juvenile Act covers this situation and provides that if it is discovered in a non-murder case that the defendant is under eighteen, the judge shall halt the criminal proceedings and send the

69. PA. STAT. ANN. tit. 11, § 50-325(a)(4) (Supp. 1973) (emphasis added).
70. 383 U.S. 541 (1966).

case to the Family Court Division (or the judge assigned to juvenile cases).[71]

The question that remains is how far a trial has to go before a judge no longer has to transfer the case back to juvenile court. What if the defendant is already serving his sentence? What if the defendant was found guilty, but post-trial motions had not yet been argued? What if post-trial motions were argued, but no sentence had yet been imposed and the information was discovered in the assembling of the pre-sentence report? The Juvenile Act provides clues, but they are somewhat contradictory. Section 7 provides that the judge must halt an adult trial "if it appears to the court in a criminal proceeding . . ." that the defendant is under eighteen.[72] If the proceeding is over, it could be argued that the transfer is no longer necessary. There still remains the question of when the proceeding is over. Also, the section talks of transferring papers and documents to the juvenile court, and speaks specifically of transferring "transcripts of testimony relating to the case."[73] This may mean that the legislature contemplated a transfer to juvenile court even when the testimony was closed and the discovery that the defendant was a juvenile came after verdict. Since section 28 provides for transfer, in the discretion of the court, *to* adult court when the juvenile requests it,[74] the failure to complain of adult proceeding may be treated as such a request.

Section 7 further provides that if a child is tried for murder and convicted of a lesser offense, the case may be transferred to juvenile court for disposition.[75] There is no provision in the Juvenile Act for transfer back to juvenile court for disposition in non-murder cases if the judge in the adult court thinks it appropriate. Young adults, however, can be committed to Camp Hill under a specific statute.[76] If there was an initial justification for the transfer, a less severe commitment will not often be in order. Moreover, such a return to juvenile court can be obtained even without statutory provision with the consent of the district attorney. This can be arranged through a nol process of the adult Bills of Indictment and a reinstitution of the juvenile petition.

71. PA. STAT. ANN. tit. 11, § 50-303 (Supp. 1973).
72. *Id.*
73. *Id.*
74. *Id.* § 50-325(c).
75. *Id.* § 50-303.
76. PA. STAT. ANN. tit. 61, § 483 (1964).

6. *Inter-County Transfers*

Section 9 of the new Juvenile Act provides that venue lies in the county of residence as well as in the county where the offense was committed.[77] Section 10 provides for transfer from one county to another.[78] This is a reenactment of prior law.[79]

There are two practical effects of this. Generally, more cases are transferred from suburban counties to the urban court system than vice versa. This adds to the backlog and to the expenses of the hard-pressed urban system. It also creates problems in obtaining witnesses from the suburbs who are not well disposed to lose a day's pay and come into the center of the large city.

D. *Pre-Trial Screening*

1. *Cases Screened Before Coming to Court*

In Philadelphia, there are many stages at which a case can "fall out" of the juvenile justice system before it reaches court.

Philadelphia has established an effective Counseling and Referral Service which deals with family problems even prior to arrest. Referrals are often made from school and community. The philosophy is to stop serious delinquency before it starts and to work with the whole family.

Many cases are adjusted at the police station and not sent beyond there. A report will be made of the arrest by the juvenile aid officer, but it will be marked adjusted and the juvenile released.

In Philadelphia, before a case gets to court, a hearing is held before a probation officer at the juvenile detention facility, the Youth Study Center. The complainants are invited and the police reports are available. A great number of cases fall out at this level, either because the offense appears minimal, because there is no long history of delinquent behavior, or because there seems to be adequate supervision in the home.

The procedures that have been in effect for some time in Philadelphia are now formally sanctioned and adopted by the Juvenile Act.

77. PA. STAT. ANN. tit. 11, § 50-306 (Supp. 1973).
78. *Id.* § 50-307.
79. Act of June 2, 1933, Pa. P.L. 1433, § 11.

Section 8 provides for informal adjustment, which contemplates both referrals to social agencies (like the Counseling and Referral Service) and adjustment without adjudication.[80]

2. *Pre-Trial Court Lists*

In Philadelphia there is another procedure that is nowhere prescribed by statute but is most effective in disposing of cases without full hearings. This is the Pre-Trial Court List (pre-trial).[81]

The pre-trial is not merely a conference. It is set formally in a courtroom with a judge on the bench wearing a robe. The assistant district attorney reads the police report, and an attempt is made to reach an agreement on the case without subpoenaing witnesses. Cases can be withdrawn if it appears that the Commonwealth does not have enough legally admissible evidence to make out a prima facie case. The juvenile can be placed on a Consent Decree, whereby he is placed on probation without trial.[82] There can be an admission to the offense. Generally, as a "rule of the game," a juvenile will not be institutionalized at the pre-trial level unless it is agreed to by the defense counsel. This might occur if it is obvious that the youth will be committed for other reasons (runaway, probation violations) or if the defense counsel believes that the juvenile might be sent to a harsher institution after a full hearing.

The pre-trial also serves to provide discovery for the defense and to ascertain whether or not the juvenile has counsel. If it appears that the case can be resolved at the pre-trial level, the voluntary defender in the courtroom will often be appointed only for the pre-trial in order to attempt to resolve the matter there. Since there is no preliminary hearing in juvenile court, the pre-trial is valuable for defense counsel because the highlights of the Commonwealth's case from the police report are read into the record. Also, defense counsel can obtain the Notes of Interview from the conference held at the Youth Study Center. If the case must go to trial, a full colloquy is held to determine whether the defendant qualifies for free counsel. It is also ascertained whether or not there is a conflict between co-defendants which would require the appointment of different counsel for one or more of the parties.

80. PA. STAT. ANN. tit. 11, § 50-304 (Supp. 1973).
81. The Pre-Trial Court List will hereinafter be referred to as pre-trial.
82. *See* text section II(D)(3) *infra*.

To this writer, it appears that pre-trial works, and works well. It seems it would also work well in juvenile courts throughout the state. Perhaps it should be expanded into adult criminal trials. It is difficult to ascertain why the results are so much better than civil pre-trial conferences. Although it is only a guess, it is suggested that the formality of the hearing, being held in a courtroom with a judge wearing a robe, psychologically influences counsel and encourages them to work on a meaningful resolution of the case before them.

3. *Consent Decree*

Section 8.1 of the new Juvenile Act, entitled "Consent decree,"[83] creates another "new" procedure that in fact has been around for a long while, although totally without any statutory or other formal authorization. This new section allows for pretrial probation similar to the "Accelerated Rehabilitative Disposition" program available to adults.[84] Prior to the Juvenile Act, Philadelphia judges had adopted a practice of marking a case "determined," entering neither a finding of not guilty nor an adjudication of delinquency. Supervision was supplied under the term "Friendly Service Supervision" (FSS). The same probation officers dealing with juveniles on juvenile probation serviced the people on FSS although they did see the FSS juveniles much less frequently.

Under section 8.1 either the district attorney or the child can move to suspend the court proceedings and continue the child under supervision in his own home, with such conditions as are negotiated.[85] If the child objects, the court must proceed to findings, adjudication and disposition. If, however, it is the district attorney who objects, the court can still enter an unconsented-to "consent" decree.[86]

The probation is for a period of six months. It can be extended for an additional six months by the probation services if the application is made "before expiration of the six-month period."[87] There are problems looming from this provision. This writer has seen a number of requests for extension of the consent decree probation that have been filed after the six months have elapsed, due to the heavy caseloads of some probation officers.

83. PA. STAT. ANN. tit. 11, § 50-305 (Supp. 1973).
84. PA. R. CRIM. P. 175-85.
85. PA. STAT. ANN. tit. 11, § 50-305(a) (Supp. 1973).
86. *Id.* § 50-305(b).
87. PA. R. CRIM. P. 175-85.

The Juvenile Act also provides, however, that if a new petition is filed alleging a delinquent act during the consent decree probation period, or if a child otherwise fails to comply with the terms of probation, in the discretion of the *district attorney*, after consulting with the probation department, the petition can be reinstated and the child tried as if no consent decree had ever been imposed.[88] In this circumstance, negotiations could result in an extension of the consent decree probation even if the request came after the six month period.

Under section 8.1(a), the Juvenile Act contemplates terms and conditions attached to the consent decree probation.[89] Each judge has his or her own favorite conditions to be attached to a consent decree or regular probation. Regular school attendance is a frequent condition, and some judges spell out the number of unexcused absences that will result in a probation violation. Restitution to the victim of an offense is another common condition. In Philadelphia, it is often provided as a condition of probation that the juvenile refrain from illegal gang activity. Constitutional arguments loom from this latter provision as it is difficult to differentiate between association with friends in a neighborhood and hanging with "corner boys" in a gang. Efforts are presently underway in Philadelphia to establish closer communication among police, gang control officers, Youth Conservation Corps workers and the courts to relay this information. Another provision, sometimes imposed on juveniles charged with weapon or drug offenses, is a consent to a search at any time by any police or law enforcement official. This is actually a waiver of fourth amendment rights in futuro. Although not yet tested in Pennsylvania, such a clause did survive a court test in California.[90]

Because of the flexibility of consent decree probation, and because it does not result in an adjudication of delinquency, it has found wide acceptance by the courts, the prosecution, and defense counsel. The probation supervision has been tighter than was the case with FSS although the court administration in Philadelphia has said that there has not been an undue burden placed on the probation officers.[91] Especially at the pre-trial level, where there are less serious crimes, the

88. *Id.* § 50-305(d).
89. *Id.* § 50-305(a).
90. People v. Mason, 5 Cal. 3d 759, 488 P.2d 630, 97 Cal. Rptr. 302 (1971).
91. Interview with Stanley M. Hopson, Deputy Administrator for the Juvenile Branch of the Family Court Division, in Philadelphia, July 2, 1973.

consent decree has been the avenue of disposition for a growing number of cases.

The "determined" (neither a finding of not guilty nor a determination of delinquency) status has not yet, however, faded into oblivion. It has been evolving as a less "serious" disposition than consent decree probation. Defense counsel often ask for a "determination" when district attorneys are holding out for a consent decree. It has always been assumed that a "determined" case could be "undetermined" if there were subsequent offenses or violations of conditions of the determination, but that question has never been tested in the courts. Some questions remain since there has never been any statutory authorization for the "determination" procedure.

The experience to date has indicated that section 8.1 provides a valuable tool. With the increase in serious juvenile crime, it is absolutely necessary to dispose of the lesser offenses more expeditiously in order to free resources to deal with the more serious delinquent acts.

4. *Prohibition of Pre-trial Social Investigation*

As practical and helpful as is section 8.1 of the Juvenile Act, section 22 is impractical, inane, and counter-productive. This section provides that unless there is an admission prior to trial (which seems procedurally impossible to this writer), or there is a petition to transfer to adult court, the court cannot order a social study concerning the child, his family, and his environment prior to a determination that the child committed the act charged or that he is deprived.[92] The effect of this section is that in those less serious offenses where negotiations for a consent decree or an admission for probation are in order, all sides are precluded from knowing what makes a juvenile tick and what his home environment is. It would require trials of dozens upon dozens of cases that are now expeditiously disposed of. It would delay treatment and supervision where prompt intercession is vital to the well-being of the juvenile during a crisis in his life. The social study does not result in an infringement on any person's rights because there are no sanctions for failure to cooperate with the investigating probation officer. Although this provision of the new Juvenile Act has the potential to wreak havoc with the administration of the juvenile justice

92. PA. STAT. ANN. tit. 11, § 50-319(a) (Supp. 1973).

system, it has not done so. This is because defense counsel and the courts have very wisely ignored and disregarded it and have conducted pre-trial social investigations just as was done before the Juvenile Act. A different problem might have prompted the enactment of this section. There should be no problem if the judge reviews the full information about a juvenile at a pre-trial hearing. However, there could be prejudice if the judge looks at a juvenile's record before adjudication at an adjudicatory hearing. This writer not only avoids looking at the record, but has instructed the court personnel not to even place the record on the bench so that its thickness or thinness can be observed. The solution is not to discontinue pre-trial investigations but to provide some mechanism to insure judicial restraint on this point.

E. *Juvenile Hearings*

1. *General Public Excluded*

Section 19(d) of the new Juvenile Act limits the people who may be present in the hearing room in juvenile cases. It provides:

> (d) Except in hearings to declare a person in contempt of court, the general public shall be excluded from hearings under this act. Only the parties, their counsel, witnesses, and other persons accompanying a party for his assistance, and any other persons as the court finds have a proper interest in the proceeding or in the work of the court may be admitted by the court. The court may temporarily exclude the child from the hearing except while allegations of his delinquency are being heard.[93]

For the most part, this provision has not caused much difficulty. The general public has not flocked in great numbers to juvenile proceedings. There has been no objection to student groups or similarly interested parties observing the proceedings. The press has been admitted without objection on those few occasions where the media believed the case merited coverage. The courts have refused, however, to allow defense counsel to bring a great number of people to the courthouse in order to "pack" the room and create a particular atmosphere.

The prime issue that has arisen under this section has been with

93. *Id.* § 50-316(d).

respect to police officers. In Philadelphia, most parties, except those actually involved in the case on trial, wait in an adjoining waiting room. Exceptions have been made for attorneys, probation officers, and police officers involved in other cases. The defendants have raised objections to the presence of officers involved in other cases being present in the courtroom, saying it is an abuse of discretion for the court to find that they have a "proper interest" in other proceedings or the work of the court. Almost all the judges have ruled that the police officers may remain in the courtroom. The Defender Association briefed and argued the point unsuccessfully in one Philadelphia case.[94] It was argued that the presence of uniformed policemen created a "vaguely prosecutorial" atmosphere in the courtroom, that the right of privacy of the juvenile was violated, and that neither convenience in calling cases nor educational benefits to the police justified their presence. The Commonwealth countered that the Juvenile Act did not mean to so severely curtail the discretion of the court, and pointed out that the police are not just members of the general public.[95]

It seems noteworthy to this writer that the Juvenile Act allows the court to admit not only persons with interests in the specific proceeding, but also those with an interest in the "work of the court."[96] Especially with the changes in search and seizure and other similar procedures as a result of recent decisions from the Pennsylvania Supreme Court, it seems that the police can be materially assisted in their work by getting as much experience as possible in seeing how the courts are ruling on such questions. Also, from listening to other juvenile cases, officers can learn first-hand the latest facts of gang violence and other problems facing police in dealing with juveniles. Thus this writer believes that the police are in the category of those having a vital interest in the work of the court.

There has been some problem in obtaining appellate review on this question. The decision to admit police is considered interlocutory. The defenders have been raising the issue in a number of cases where appeals on other issues make it seem likely that the cases will eventually come before the appellate courts.[97]

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94. Commonwealth v. Kent, No. 7636 (Pa. C.P. Phila. Co., Sept. 11, 1973).
95. *Id.*
96. PA. STAT. ANN. tit. 11, § 50-316(d) (Supp. 1973).
97. Interview with Michael L. Levy, former Chief of the Family Court Division of the Defender Association of Philadelphia, in Philadelphia, July 16, 1973.

2. *Sidebar Discussions*

The Juvenile Act specifically provides that the court may temporarily exclude the child from the hearing.[98] Especially in discussing disposition, a great deal of conversation takes place among counsel, the court, probation officers, social workers, etc., out of the range of hearing of the juvenile or his parents. Much of this is necessary because the presence of the parents or the juvenile would preclude frank discussion of the family problems and the psychological problems of the juvenile that are pertinent to his treatment and rehabilitation.

At the same time, the exclusion of the juvenile from discussions involving him creates other problems. The juvenile often feels quite alien to the system that is determining his future. His lawyer and probation officer, along with everybody else, are going into the back room and emerging with a decision that may send him away some place. The problem is aggravated in the urban areas where a great many of the defendants are black and the group going into the back room for discussion is all white.

There is no easy answer to this dilemma. As long as the great social gaps continue, it will be difficult to create a situation where the juvenile will feel he has been tried by a system that is not totally foreign to him.

3. *Right to Counsel*

Section 20 of the Juvenile Act specifically sets forth that a juvenile is entitled to counsel "at all stages of any proceedings under this act."[99] This section also provides for free counsel if the juvenile is indigent.[100] Of course, this is mandated by the United States Supreme Court decision of *In re Gault*.[101]

A voluntary defender is available in all juvenile proceedings in Philadelphia, both on pre-trial court lists and for adjudicatory hearings. Attorneys are not provided at the interviews before probation officers held in Philadelphia at the Youth Study Center. This is not required by the Juvenile Act, since this interview is not part of the formal "proceedings." Under section 6, the proceedings do not begin until the

98. PA. STAT. ANN. tit. 11, § 50-316(d) (Supp. 1973).
99. *Id.* § 50-317.
100. *Id.*
101. 387 U.S. 1 (1967).

filing of a petition,[102] and the "informal adjustment" hearings are held before the petition is filed.[103] Private counsel frequently report difficulties in getting to these hearings because they are held so quickly after the arrest. Also, although parents are supposed to be notified of a juvenile's apprehension and his whereabouts with all reasonable speed after a child is taken into custody,[104] problems are still reported in catching up with a juvenile as he moves from the police district to the Youth Study Center.

Screening of juveniles in order to see if they qualify for the voluntary defender is cursory prior to the pre-trial hearing stage. The procedure in Philadelphia at the Youth Study Center is merely to ask the family if they can afford counsel, without any further probing. Often juveniles come to the pre-trial hearing or detention hearing without counsel. Many judges are lenient in examining financial qualifications before appointing the voluntary defender at the pre-trial hearing in the hopes that the case can be taken off the list at that level if the voluntary defender is in the case. If the case cannot be adjusted at the pre-trial stage a further inquiry into financial qualifications for free counsel is conducted by the judge. The pre-trial hearing also serves a valuable function for the Philadelphia defender, who has the juvenile in the building and can send him to the defender's office for an interview. Private counsel who are appointed often find great difficulty in contacting their clients and in having their clients come for an interview before the court date.

Problems also arise if the parents are the complainants, such as in a runaway or incorrigibility petition. There is a conflict between the juvenile and his parents. The defender is almost always appointed in these circumstances, and the parents are rarely assessed the costs of this representation.

4. *Guarantee of Basic Rights*

Section 21 of the new Juvenile Act spells out some of the rights guaranteed juveniles in addition to the right to counsel. This section spells out the right to introduce evidence, to cross-examine witnesses, to refuse to testify, and to suppress illegally obtained statements or

102. PA. STAT. ANN. tit. 11, § 50-302(3) (Supp. 1973).
103. *Id.* § 50-304(a).
104. *In re* Gault, 387 U.S. 1 (1967).

evidence.[105] This section adds nothing to existing law, since these rights are guaranteed under *In re Gault*,[106] *In re Winship*,[107] and other decisions.

One question has arisen under this section. Section 21 provides: "A confession validly made by a child out of court at a time when the child is under eighteen years of age shall be insufficient to support an adjudication of delinquency unless it is corroborated by other evidence."[108] Defense counsel have taken the position that even if independent evidence that a crime has been committed is in the record, the juvenile cannot be tried if the only thing tying him to the crime is his statement. Prosecutors have taken the position that the instant language merely restates the corpus delicti principle that a confession is insufficient to support a conviction unless there is independent evidence that a crime actually was committed. This writer agrees with this latter position. The section by its title purports to deal only with "basic rights," and the other rights outlined in the section are traditional adult guarantees rather than new and unique provisions of law.

F. *Dispositions*

1. *Importance in Juvenile Proceedings*

Dispositions have long been considered the "Name of the Game" in juvenile court. Although the distinction between probation and incarceration does exist in adult court, after the decision has been made to incarcerate, the question becomes more one of "how long" than "where." Of course, the length of the sentence does make a difference as to whether a convicted adult goes to a state or county institution. However, there is a far greater range of institutions to which a judge may commit a juvenile, and, correspondingly, a far greater difference in the kind of programs in which juveniles may be involved.

There are great variations in the kind of treatment a juvenile receives at the different institutions. The range extends from institutions with many of the same features as prep schools, such as George Junior Republic in the Pittsburgh area and St. Gabriel's Hall near Philadelphia, to what can only be described as a prison, Camp Hill.

105. PA. STAT. ANN. tit. 11, § 50-318 (Supp. 1973).
106. 387 U.S. 1 (1967).
107. 397 U.S. 358 (1970).
108. PA. STAT. ANN. tit. 11, § 50-318(b) (Supp. 1973).

The problem is a particularly acute one for the practitioner who only occasionally ventures into juvenile court. No reference source exists which gives any real picture as to the nature of the various institutions. It is imperative for a lawyer going to a dispositional hearing to discuss the range of possibilities with a knowledgeable person. Otherwise, the lawyer will face the situation of one attorney who felt highly pleased because his client was going to a "camp," not knowing that "Camp" Hill bears no relationship to a boys' summer camp.

2. *Commitment for Children Under Twelve*

Under section 11 of the old Juvenile Court Law[109] the court was prohibited from committing a child under the age of twelve years to any institution unless the child had first been on probation. This provision was the center of a public furor in Philadelphia when two boys, aged ten and eleven, participated in the imprisonment, torture, and sexual abuse of an elderly woman. This provision is nowhere to be found in the new Juvenile Act, and there is now no legal barrier to committing a delinquent child of any age. The practical problem does exist of finding an appropriate institution.

3. *Prohibition of Commitment of Deprived Child to Institution with Delinquent Children*

Although one part of section 11 of the old Juvenile Court Law[110] did not find its way into the new Juvenile Act, another did. This is the clause which prohibits the commitment of deprived children to an institution designed for the benefit of delinquent children unless the child is delinquent as well as deprived. This appears as section 24(b) of the new Juvenile Act.[111]

This is another section that looks better on paper than it works out in practice. The problem is that there is no hard and fast distinction between a delinquent child and a deprived child. Most juveniles with problems are a little delinquent and a little deprived at the same time. It is sometimes hard to determine the difference between a child who is delinquent because "of habitual disobedience of the reasonable and

109. Act of June 2, 1933, Pa. P.L. 1433, § 11.
110. *Id.*
111. PA. STAT. ANN. tit. 11, § 50-321(b) (Supp. 1973).

lawful commands of his parent"[112] and a child who is deprived because he "is without proper parental care."[113]

For many children the line is clear. For a large group of children in the middle, however, the question should not be whether the child is delinquent or deprived, but what institution suits him best; sometimes more important, what institution can take him without a six month wait to get in.

As is the case with many provisions of the law that do not work, resourceful judges and attorneys find their way around them. In this case, after hearing the testimony which would establish a delinquent act, the judge merely reserves final adjudication until the word is in from the institutions to which referrals are made. If the juvenile is accepted at an institution designated for "deprived" children, the delinquency matter is determined and he is adjudged deprived. If, on the other hand, the institutions for "deprived" children either will not accept the juvenile or are full, the judge then makes the determination of delinquency and sends the juvenile to a so-called "delinquent" institution.

4. *Length of Commitments*

Section 26 of the new Juvenile Act imposes new restrictions upon the length of commitments. The maximum under the Juvenile Act is now the maximum sentence for the offense under the Penal Code, or three years, whichever is less.[114] The time period can be extended for a similar period of time after hearing, if that seems to be in the best interests of all concerned.[115] Thus it is still possible for a juvenile to receive double the maximum sentence that could be imposed if he were an adult.

At the same time, section 26 requires the committing court to review each commitment every six months and to hold a dispositional review hearing at least once a year.[116] Many institutions have done an excellent job in providing the court with frequent, comprehensive reports on the status of juveniles committed to them. The court is thus able to provide input based on its contact with the juvenile. This often can

112. *Id.* § 50-102(2)(ii).
113. *Id.* § 50-102(4)(i).
114. *Id.* § 50-323.
115. *Id.*
116. *Id.*

be helpful, since the judge has seen what happens to the juvenile when outside the restricted institutional setting. It is often helpful to the court in those situations when the juvenile comes back to court, either for discharge, for a runaway, or a subsequent crime committed on weekend pass. Many other institutions fail to respond to repeated inquiries by the court for status reports. Unfortunately, the new provision for review[117] does not change things very much, at least with respect to the six-month review. Those institutions which report frequently (Glen Mills is one example) have no need for a mandated review—the institution is on top of the problem. Those institutions that have been lax in providing information to the court (Camp Hill has caused some problems for this writer, but changes are being made) are not much bothered by the requirement, since their six-month report to the court is cursory and not much help at all. Since the new Juvenile Act has been read to apply only to commitments made after its effective date in February of 1973, it is too soon to see what will happen with the one-year formal reviews.

Another problem between the courts and institutions has arisen that is not really touched by the new Juvenile Act. A number of institutions grant weekend passes and then extended leaves without contacting the court. Often, from the judge's view of the crime committed, it does not appear that a two or three month stay in an institution will be sufficient for rehabilitation, no matter how well the juvenile does in that institution. Also, sometimes there are gang pressures on the street that make it advisable to keep the juvenile completely away from his home "turf" for several months. Judges have recently been inserting provisions such as "no weekend passes without order of court," and most institutions have been honoring these requests. Changes have been made to keep the courts better apprised as to proposed extended leaves.

A major step toward better court-institution relations has occurred in Philadelphia with the expansion of Community Related Institutional Probation. Now a Philadelphia probation officer begins to work with every juvenile who has been committed to one of 23 different institutions as soon as he or she is committed. Not only is this most effective in reintegration of the juvenile into his community, but these probation officers are a valued aid to the court in keeping the judges posted on developments with juveniles they commit.

117. *Id.*

5. *"Camp Hill" Question*

The one issue involving the new Juvenile Act that has reached the appellate courts is the issue as to whether it prohibits the commitment of a juvenile who has been adjudged delinquent to the State Correctional Institution at Camp Hill, which is the only maximum security institution that has been serving juveniles.

The question arose following enactment of section 27 of the Juvenile Act, which provides in part:

> A child shall not be committed or transferred to a penal institution or other facility used primarily for the execution of sentences of adults convicted of a crime, unless there is no other appropriate facility available, in which case the child shall be kept separate and apart from such adults at all times.[118]

"Child" is defined as an individual under the age of eighteen or under the age of twenty-one who committed an act of delinquency before reaching the age of eighteen.[119]

In addition to receiving juveniles, Camp Hill also receives persons between the ages of fifteen and twenty-one convicted of adult crimes who have not previously been sentenced to a penitentiary or state prison. They are committed there, in lieu of sentence, for an indefinite term.[120] Some young adults sentenced to a fixed term are transferred to Camp Hill administratively.[121]

As of April 5, 1973, 490 of the Camp Hill total population of 849, or 58 per cent, were committed by the criminal courts.[122] The classification and separation of residents at Camp Hill was not done by age, but rather by needs, background, degree of hostility, etc. Superintendent Ernest S. Patton did this because in his view, which is shared by this writer, there are many more significant differences among young men between the ages of sixteen and twenty-one (or even twenty-five) than whether or not they happen to have passed their eighteenth birthday, or whether they passed through the juvenile court system or the adult court system.[123]

The Superior Court of Pennsylvania passed on this matter in an opinion written by Judge William F. Cercone, and filed on September

118. *Id.* § 50-324(a).
119. *Id.* § 50-102(1).
120. PA. STAT. ANN. tit. 61, § 483 (1964).
121. *In re* Curtis Stokes, No. 172110 (Pa. C.P. Phila. Co., May 2, 1973).
122. *Id.*
123. *Id.*

19, 1973, in the cases of *In re Parker*, and *Commonwealth ex rel. Parker v. Patton*.[124]

In its opinion, the court said that Camp Hill played a dual role, one good and one bad. The court pointed to the rehabilitative programs at Camp Hill as the good and the mingling of juveniles and adults convicted of crime as the bad. It put the blame on the legislature for failing to establish and fund separate institutions for juveniles and adults which each carry out the same kind of rehabilitative programs.

The court said it was clear that in Pennsylvania there were no more appropriate facilities for certain juveniles than Camp Hill. In order to meet the requirements of section 27, the court directed the Camp Hill authorities to provide separate facilities for the needs of juvenile delinquents and adult criminals, or to provide for the separate use of the same facilities "avoiding at all times any intermingling of the two groups."[125] The separation was ordered for all portions of the daily life of the juveniles, including sleeping, resting, recreation and academic and vocational training.

The superior court did not directly address itself to a point that was considered determinative by a Philadelphia court.

In a case involving the same issue, Family Court Administrative Judge Frank J. Montemuro, Jr., upheld commitments to Camp Hill without ordering segregation of juveniles from adults.[126] The reasoning was that Camp Hill is not primarily used for the execution of sentences of adults convicted of a crime, since its primary purpose is rehabilitation and reform rather than mere execution of sentences. Judge Montemuro pointed to section 25(4) of the Juvenile Act, which specifically permits the commitment of a child to a special facility for children operated by the Department of Justice. Since there is only one such facility, Camp Hill, Judge Montemuro concluded that the legislature must have been aware of this and therefore contemplated continued use of Camp Hill and did not consider it a penal institution for the execution of sentences but rather a reformatory.[127]

In dealing with this question, the superior court merely said, ". . . we could argue needlessly as to whether Camp Hill is primarily a penal institution or a rehabilitation facility."[128] Whether

124. Nos. 731 & 949 (Pa. Super. Ct., Oct. 14, 1973) (consolidated for appeal).
125. *Id.*
126. *In re* Curtis Stokes, No. 172110 (Pa. C.P. Phila. Co., May 2, 1973).
127. *Id.*
128. *Id.*

needless or not, it is expected that this will be argued again when this matter comes before the Pennsylvania Supreme Court.

The problems of this entire situation merely accentuate the lack of facilities in the Commonwealth for dealing with juveniles with certain specific needs. No one questions the need for a secure institution for juveniles. Despite the trend toward "open" settings, no one modality works for everybody.

The difficulty this writer foresees is that the legislature for many years to come will fail to allocate sufficient funds for a separate, secure facility for juveniles, and an order of court forcing Camp Hill to operate two separate institutions in one facility will make that a worse, not better, institution for the rehabilitation of juveniles.

G. *Post-Trial Proceedings*

1. *Provisions for Rehearing*

Under section 15 of the old Juvenile Court law,[129] if a child was committed he had an absolute right to a rehearing. He could not only appeal for errors of law or fact, but could also allege that the order was "improvidently or inadvertently made."[130] At the rehearing either side could present testimony, although the Commonwealth could rely upon the record made at the original trial.[131]

There is no provision for such a rehearing in the new Juvenile Act. As a practical matter, the court can still allow this rehearing as a matter of discretion, with or without statutory authority, absent opposition from the district attorney. In Philadelphia, it can be anticipated that if a judge thinks there are some compelling reasons for a rehearing, in most instances the Commonwealth would go along with that decision.

2. *Post-Trial Motions*

Under section 15 of the old law, there was a specific provision for appeals to the superior court from final orders after rehearings.[132] A question has arisen as to whether post-trial motions in arrest of judg-

129. Act of June 2, 1933, Pa. P.L. 1433, § 15.
130. *Id.*
131. *Id.*
132. *Id.*

ment or for a new trial are necessary before an appeal can be filed to the superior court. The general view is that they probably are not, since there is no provision in the Juvenile Act for such motions, but it is a good idea to file and argue them anyway. There is the possibility that a motion in arrest of judgment or for a new trial will be granted by the trial judge himself; moreover, it is a courtesy to the court to advise the judge of the issues involved before an appeal is taken.

III. Conclusion

The promulgation of a major new act carries with it theoretical connotations of definitiveness and rigidity. Now we have the law. In practice, no one yet has learned how to write legislation not subject to different interpretations by creative lawyers. Furthermore, successful changes in the law are not usually dictated by outsiders but are evolved by the judges and lawyers working every day in the field.

The same is true with respect to the new Juvenile Act. The changes are not really that sweeping. Some new concepts are very effective, others unreal and impractical. Now that the words are on paper, the real job has begun. That job must be done by judges and lawyers all working to establish a framework within the printed word that successfully deals with the problems of the people that come to the bar of the court. However, if post-trial motions are to be filed, the judge must be asked to defer disposition. Otherwise, it is likely that the appeal time will start to run from the date of the disposition and the right to appeal to the superior court might be lost before appeal.